

2004

Mothers' Dreams: Abortion and the High Price of Motherhood

Joan C. Williams

UC Hastings College of the Law, williams@uchastings.edu

Shauna L. Shames

Follow this and additional works at: http://repository.uchastings.edu/faculty_scholarship



Part of the [Labor and Employment Law Commons](#), and the [Law and Gender Commons](#)

Recommended Citation

Joan C. Williams and Shauna L. Shames, *Mothers' Dreams: Abortion and the High Price of Motherhood*, 6 U. Pa. J. Const. L. 818 (2004).
Available at: http://repository.uchastings.edu/faculty_scholarship/826

This Article is brought to you for free and open access by UC Hastings Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.



Faculty Publications

UC Hastings College of the Law Library

Author: Joan C. Williams

Source: University of Pennsylvania Journal of Constitutional Law

Citation: 6 U. Pa. J. Const. L. 818 (2004).

Title: *Mothers' Dreams: Abortion and the High Price of Motherhood*

Originally published in UNIVERSITY OF PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW.
This article is reprinted with permission from UNIVERSITY OF PENNSYLVANIA JOURNAL OF
CONSTITUTIONAL LAW and University of Pennsylvania Law School.

MOTHERS' DREAMS: ABORTION AND THE HIGH PRICE OF MOTHERHOOD

Joan C. Williams* and Shauna L. Shames**

INTRODUCTION

In the late 1980s and early 1990s, pro-choice and anti-abortion activists battled over the sacred ground of motherhood. Signs wielded by protestors outside clinics often read, "Choose life—your mother did," while bumper-stickers on the pro-choice side struggled to fight fire with fire with the slogan, "Pro-Child, Pro-Family, Pro-Choice."

Yet, in recent years, the mother-oriented pro-choice slogan seems in short supply. Choice rhetoric of the past decade has returned to focus more on women's individual rights to privacy, autonomous control of sexuality, and bodily integrity/avoidance of forced pregnancy. In response to the increasingly gruesome photographs of fetuses from the anti-abortion side, pro-choice activists produced posters depicting the often terrible conditions for women needing abortions in the pre-*Roe* era, such as the striking set of ads by the New York City-based Pro-Choice Public Education Project.¹ In the face of the most systematic attacks of the past thirty years on women's reproductive freedom by both the Bush administration and Congress, such reminders are crucial. At the same time, we must use all of the tools at our disposal, and not limit ourselves to arguments based on women's individual privacy rights.

Drawing on material from the growing literature on care work,² this Article argues that we need to add a new arrow to the quiver of abortion rights advocacy. In addition to the important individualistic claims of privacy, freedom of choice, and consent/bodily integrity,³

* Visiting Professor of Law, University of California, Hastings School of Law; Director, Program on WorkLife Law, American University, Washington College of Law. I would like to thank Sarah Kenney and Lenore Espinosa for their excellent research assistance.

** Former Coordinator, Haven Coalition; Board Member, New York Abortion Access Fund.

¹ Pro-Choice Public Education Project, *Subway and Metro Ads*, <http://www.protectchoice.org/ads/subway/index.htm> (last visited Apr. 23, 2004).

² See, e.g., *Symposium on the Structure of Care Work*, 76 CHI.-KENT L. REV. 1389 (2001).

³ See, e.g., Eileen L. McDonagh, *My Body, My Consent: Securing the Constitutional Right to Abortion Funding*, 62 ALB. L. REV. 1057 (1999) (arguing that an individual woman's right to an abortion should be based on a right to bodily integrity and consent under the Equal Protection Clause of the Fourteenth Amendment).

pro-choice arguments should include discussion of abortion as a way to put off having children until they can be taken care of, or to take better care of existing children. A 1999 report by the Alan Guttmacher Institute ("AGI"), *Sharing Responsibility: Women, Society, and Abortion Worldwide*, states that "[w]hile a pregnant woman has virtually no control over whether or not she experiences a miscarriage or stillbirth, an induced abortion is almost always the result of her decision that she is in no position to bring a child into the world."⁴ This Article explores this reasoning and argues that abortion must be an option for mothers trying to do the best thing for their existing and/or potential children. This approach embeds women's decisions concerning abortion in the cultural context in which they occur, pointing out that women in this country make their reproductive decisions in the context of the particular social and economic conditions of motherhood as it is experienced in the United States today. To better illustrate the contexts in which decisions to seek abortions are made, this Article includes narratives of women who have sought assistance from the Haven Coalition to gain access to abortions.

We intend for this argument to complement, not replace, the important language of women's privacy rights. From a political/strategic perspective, our approach promotes both traditional and nontraditional elements of women's role in society. On the traditional side, this argument draws upon the moral force of motherhood, wielded with much success by opponents of abortion, and seeks to reclaim this force for the pro-choice side. Such a tactic, as Eileen McDonagh has pointed out, can successfully use "traditional roles to gain non-traditional goals."⁵ This approach, however, also has its limitations⁶—McDonagh cautions, to quote Audre Lourde, that "the master's tools will never dismantle the master's house."⁷ Unlike most pro-choice attempts to use motherhood as a justification

⁴ ALAN GUTTMACHER INST., *SHARING RESPONSIBILITY: WOMEN, SOCIETY, AND ABORTION WORLDWIDE* 7 (1999) [hereinafter *SHARING RESPONSIBILITY*], <http://www.agi-usa.org/pubs/sharing.pdf>.

⁵ Eileen L. McDonagh, *Models of Motherhood in the Abortion Debate: Self-Sacrifice Versus Self-Defence*, in *ETHICAL ISSUES IN MATERNAL-FETAL MEDICINE* 213, 221 (Donna L. Dickenson ed., 2002).

⁶ One particular limitation, noted by McDonagh, is that current pro-motherhood or pro-choice justifications for abortion do not also justify governmental funding of abortions for women who cannot afford them. McDonagh writes:

The combination of defining the problem of abortion rights constitutionally in terms of the privacy of choice and politically in terms of a traditional view of motherhood has produced a rigid, serious policy consequence—namely, failure to obtain access to abortion services for women in the form of public funding of abortions.

Id. at 213.

⁷ AUDRE LORDE, *The Master's Tools Will Never Dismantle the Master's House*, in *SISTER OUTSIDER* 110, 112 (1984); see McDonagh, *supra* note 5, at 221 ("[T]o find a solution to the problem of access to abortion . . . we must turn to a different model of motherhood . . .").

for abortion rights, our argument attempts to place abortion and mothers in the work/family context. This requires a paradigm shift from the traditional motherhood model to a view of women as economic actors unsupported by a husband or hidden man in the background. Our approach notes that whether or not a woman is married (and particularly if not), motherhood in the United States today is often prohibitively difficult and expensive.

I. CURRENT CONDITIONS OF MOTHERHOOD IN THE UNITED STATES: SELFLESSNESS FOR MOTHERS, SELF INTEREST FOR OTHERS

Drawing on the work of Kristin Luker and others, Joan Williams wrote over a decade ago about the links between abortion and the norm of the “good mother.”⁸ Since that time, the norm of selfless motherhood has emerged in sharp relief both in literature and in social science. Social psychologist Monica Biernat has examined stereotypes of the “good father” and “good mother” and found a striking difference: the good mother was seen as someone who was “willing to always be there and to do anything for the children.”⁹ In other words, the good mother has no personal agenda other than to selflessly care for her family.

Novelist Sue Miller explores this theme in her extraordinary novel *The Good Mother*.¹⁰ Miller describes the experience of Anna Dunlap, who divorced her husband, Brian, simply because she wanted to experience life differently, more fully, than she could while married to him. It is the right choice for her. Her husband is depicted as uptight and unimaginative. Seeking change, Anna becomes involved with Leo Cutter, a vibrant, caring, and artistic man who re-awakens her, sexually and ethically, and is wonderful with her daughter to boot.

In other words, Anna flouts the norm of selfless motherhood by seeking self-fulfillment. As long as her conduct remains beneath the radar screen, she remains sublimely happy. But then her ex-husband, jealous of her new life and uptight about sex, takes her to court, alleging that Leo sexually abused his daughter, Molly, and that Anna

⁸ Joan Williams, *Gender Wars: Selfless Women in the Republic of Choice*, 66 N.Y.U. L. REV. 1559, 1588–94 (1991) (arguing that abortion advocates must address the traditional abortion rhetoric of “choice” and work to portray women as selfless and caring mothers when seeking abortion services).

⁹ Diane Kobrynowicz & Monica Biernat, *Decoding Subjective Evaluations: How Stereotypes Provide Shifting Standards*, 33 J. EXPERIMENTAL SOC. PSYCHOL. 579, 584–87 (1997); see also Cecilia Ridgeway & Shelley Correll, *Motherhood as a Status Characteristic*, J. SOC. ISSUES (forthcoming 2004) (manuscript at 12–13, on file with authors) (exploring motherhood as a marker of social status).

¹⁰ SUE MILLER, *THE GOOD MOTHER* (1986).

exposed Molly to inappropriate sexual situations (by having sex with Leo while Molly was asleep in the same bed).

Miller takes us step-by-exquisitely-painful-step through the process by which Anna loses custody of her daughter. Once the court renders its verdict, Anna does not contest the decision. The irony of the novel's title is that Anna remains "the good mother" until the end. In the interest of sparing her daughter another painful set of legal conflicts, and because the relationship that cost her custody of Molly has become too painful to bear, she ends up separating from Leo. Anna moves closer to Brian and his new stay-at-home wife, accepting the limited visitation rights the court has imposed, and dutifully encouraging Molly to love her father, her new baby half-brother, and her father's new wife. Anna goes so far as to create a household that is more like that of her ex-husband—more up-tight, less artistic and expressive—because a psychologist advises her that this will make Molly's transitions between the two households easier. Anna totally subordinates her own life goals to what she believes is best for her daughter.

This norm of maternal selflessness is at the center of much pro-life rhetoric, which commonly paints aborting women as heartless people who get "convenience abortion[s]" and preach "individual selfishness."¹¹ Pro-life activists, according to Kristin Luker, are predominantly working-class women with high school educations who hold the "traditional" view that "men are best suited to the public world of work, and women are best suited to rear children, manage homes, and love and care for husbands."¹² Luker's work is confirmed by anthropologist Faye Ginsburg, whose ethnographic study also found that many pro-life advocates embrace the view that aborting women are selfish and driven by materialist concerns. Ginsburg quotes one pro-life advocate:

I think we've accepted abortion because we're a very materialistic society and there is less time for caring. To me it's all related. Housewives don't mean much because we do the caring and the mothering kinds of things which are not as important as a nice house or a new car.¹³

Linda Gordon aptly summarizes this view: "[Abortion opponents] fear a completely individualized society with all services based on cash nexus relationships, without the influence of nurturing women counteracting the completely egoistic principles of the economy, and

¹¹ See Williams, *supra* note 8, at 1579 (citing CELESTE MICHELLE CONDIT, *DECODING ABORTION RHETORIC* 124 (1990)).

¹² KRISTIN LUKER, *ABORTION AND THE POLITICS OF MOTHERHOOD* 160 (1984).

¹³ FAYE D. GINSBURG, *CONTESTED LIVES: THE ABORTION DEBATE IN AN AMERICAN COMMUNITY* 185 (1989).

without any forms in which children can learn about lasting human commitments to other people."¹⁴

What is the subtext? The dominant ideology in the United States is liberal individualism: what makes the world go around is individuals who pursue their own self-interest.¹⁵ This dominant ideology of individualism, however, has never applied to mothers, who are supposed to be selfless.¹⁶ Indeed, we could summarize our belief system as "selflessness for mothers and self-interest for others."¹⁷ The usual pro-choice rhetoric, which focuses heavily on individual autonomy and sexual liberation for women, feeds the charge that women who get abortions are "selfish." Pro-choice advocates need rhetoric capable of defusing this inaccurate view.

In fact, abortion often reflects not mothers' selfishness, but mothers' dreams for their children. Many women who abort are not motivated by materialism or hedonism (leaving aside for a moment whether women should be entitled to the "good life"), but by their desire to be good mothers. "There is only one reason I've ever heard for having an abortion: the desire to be a good mother,"¹⁸ comments a widely known abortion rights advocate and abortion doctor. In the United States, being a good mother is hard indeed, given the social and material conditions of motherhood.

Women considering abortion make their decisions in the context of the social and material conditions of motherhood in the United States today. Mothers face five conditions, discussed in the sections that follow, that define and sharply limit their dreams of a good life for their children:

1. the high price of motherhood;
2. the family-hostile workplace;
3. the linkage of health insurance and other benefits to good jobs (which are not the kind most mothers have);

¹⁴ Linda Gordon, *Why Nineteenth-Century Feminists Did Not Support "Birth Control" and Twentieth-Century Feminists Do: Feminism, Reproduction, and the Family*, in *RETHINKING THE FAMILY: SOME FEMINIST QUESTIONS* 40, 51 (Barrie Thorne & Marilyn Yalom eds., 1982), quoted in GINSBURG, *supra* note 13, at 196.

¹⁵ See Williams, *supra* note 8, at 1562-64 (describing findings from LAWRENCE M. FRIEDMAN, *THE REPUBLIC OF CHOICE* (1990), that freedom in the twentieth century is defined as having a wide range of personal choice).

¹⁶ By selfless, we mean selfless in a social/familial sense rather than in a biological sense. Several important works have noted that bearing one's own children rather than adopting is biologically selfish. According to this view, it is the women who get abortions who are "selfless" and those who choose to have children who are "selfish." See generally RICHARD DAWKINS, *THE SELFISH GENE* (2d ed. 1989) (arguing that the gene, not the individual, is the fundamental unit of natural selection); WILLIAM WRIGHT, *BORN THAT WAY: GENES, BEHAVIOR, PERSONALITY* (1998) (describing the influence of genes on personality and behavior).

¹⁷ Williams, *supra* note 8, at 1561, 1572.

¹⁸ Elizabeth Karlin, *An Abortionist's Credo*, N.Y. TIMES MAG., Mar. 19, 1995, at 32.

4. the lack of social supports for families in the United States; and
5. the heightened expectations for mothers in our society.

Despite evidence that marginalization of women occurs when they become mothers, few commentators have made the connection between the current conditions of motherhood and the need for abortion access. Literature produced by the field of work/family studies provides information on each of these conditions that is not often placed in the context of the abortion debate. It is high time to connect the dots and examine the relationship between the current conditions for mothers and the need for reproductive freedom for all women.

A. *The High Price of Motherhood*

American women pay a high price to become mothers. The negative impact of having children amounts to a wage penalty for being a mother.¹⁹ Most mothers cut back their paid work responsibilities and hours in order to be the primary caregivers for children: two out of three mothers work less than a forty-hour week, year-round, during the key career-building years.²⁰ The search for flexible hours, including but not limited to part-time jobs, puts mothers at risk of low wages,²¹ lack of benefits,²² and career stall.²³ In addition, increasing evidence exists that women experience discrimination not just as *women*, but once they become mothers, as *mothers*—a distinct form of job discrimination.²⁴

¹⁹ See Jane Waldfogel, *Understanding the "Family Gap" in Pay for Women with Children*, 12 J. ECON. PERSP. 137 (1998) [hereinafter Waldfogel, *Understanding the Family Gap*] (discussing wage inequality not just between men and women, but intragender between mothers and childless women); see also Jane Waldfogel, *The Effect of Children on Women's Wages*, 62 AM. SOC. REV. 209 (1997) [hereinafter Waldfogel, *The Effect of Children*] (analyzing statistical data pointing to women's wage discrepancies based on having children).

²⁰ JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 2 (2000).

²¹ See INST. FOR WOMEN'S POLICY RESEARCH, PUB. NO. A127, TODAY'S WOMEN WORKERS: SHUT OUT OF YESTERDAY'S UNEMPLOYMENT INSURANCE SYSTEM (May 2001) [hereinafter TODAY'S WOMEN WORKERS] (reporting that women make up 60% of low-wage workers).

²² See U.S. GEN. ACCOUNTING OFFICE, GAO/HEHS-00-76, CONTINGENT WORKERS: INCOMES AND BENEFITS LAG BEHIND THOSE OF THE REST OF THE WORKFORCE (June 2000) (discussing the dearth of benefits such as health insurance to contingent workers, including those that work part-time).

²³ See Jeffrey Wenger, *The Continuing Problems With Part-Time Jobs*, 155 EPI ISSUE BRIEF, Apr. 24, 2001 (reporting that part-time workers have fewer long-term career opportunities).

²⁴ See Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job*, 26 HARV. WOMEN'S L.J. 77 (2003) (documenting "maternal wall" discrimination).

Jane Waldfogel and others have identified a persistent “family gap” in the United States that is responsible for much of the gender gap between men’s and women’s wages; that is, mothers earn lower hourly wages than women without children.²⁵ In the United States, while unmarried women, primarily non-mothers, earn roughly 90% of the wages of unmarried men, married women, primarily mothers, earn only 60% of the wages of married men.²⁶ Waldfogel wrote in 1997 that not all of this “family gap” can be accounted for by the fact that mothers have less labor market experience than men or women without children. Rather, she suggests that the “‘work and family conflict,’ whether in the form of employer perceptions (i.e., discrimination) or employee adjustments (e.g., occupational downgrading, changing jobs after childbirth, etc.), may have a negative effect on the wages of mothers.”²⁷

In *The Price of Motherhood*, Ann Crittenden points out the fundamental hypocrisy of conservatives whose speeches laud motherhood and “family values,” yet who support policies that marginalize mothers economically and socially. Crittenden writes:

Social conservatives often expect daughters but not sons to renounce ambition and serve their families without compensation. They preach early marriage and childbearing, without warning young women that this increases their chances of divorce and lowers their lifetime income. They embrace an economy that relies on free or badly paid female labor, and then wonder why women express frustration with their lot.²⁸

According to Crittenden, the country, indeed the world, is “free-riding” on the unpaid work of mothers:

Unpaid female caregiving is not only the life blood of families, it is the very heart of the economy

This huge gift of unreimbursed time and labor explains, in a nutshell, why adult women are so much poorer than men—even though they work longer hours than men in almost every country in the world.²⁹

The work of raising and caring for children, often praised as the most important job in the world, is also the most poorly paid. Many women, especially those who are young, poor, or who already have children at home, simply cannot afford to carry through an

²⁵ See Deborah J. Anderson et al., *The Motherhood Wage Penalty Revisited: Experience, Heterogeneity, Work Effort, and Work-Schedule Flexibility*, 56 INDUS. & LAB. REL. REV. 273 (2003) (analyzing data from the 1968–88 National Longitudinal Survey of Young Women, including Waldfogel’s research); Waldfogel, *The Effect of Children*, *supra* note 19 (same); see also Waldfogel, *Understanding the Family Gap*, *supra* note 19, at 149–53 (discussing the United States’ institutional structure and its lack of emphasis on maternity leave and child care).

²⁶ Waldfogel, *Understanding the Family Gap*, *supra* note 19, at 142.

²⁷ Waldfogel, *The Effect of Children*, *supra* note 19, at 216.

²⁸ ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD* 7 (2001).

²⁹ *Id.* at 8.

unplanned pregnancy. Denying women access to abortion puts both the mothers and their existing or potential children at risk of hunger, homelessness, ill health, and a myriad of other conditions resulting from poverty.³⁰ Indeed, a recent study found that the states with the fewest provisions for poor mothers and children are also the ones with the greatest restrictions on access to abortion.³¹

B. The Family-Hostile Workplace

In a case that received a great deal of local media attention, a Washington, D.C. emergency medical services employee had an abortion after she was given the choice between having an abortion and being fired. Further investigation revealed that the fire chief had requested that female applicants take pregnancy tests and placed applications on hold if the tests were positive.³²

This story dramatizes the family-hostile workplaces many parents face in the United States. In most good jobs today, we still define the ideal worker as someone who starts to work in early adulthood and works full-time with full force for forty years straight, taking no time off for childbearing, child rearing, or anything else. In the United States, we also have the longest work hours of any industrialized country, with workers often away from home ten to twelve hours per day.³³ "Full-time" in good jobs in the United States often means overtime: 22.4% of men work more than fifty hours per week.³⁴ The only alternative is "part-time," and part-time workers in the United States are often ruthlessly exploited. Individuals in part-time work earn, on average, roughly 80% of the hourly wages of those working full time.³⁵

³⁰ See Rachel K. Jones et al., *Patterns in the Socioeconomic Characteristics of Women Obtaining Abortions in 2000–2001*, 34 PERSP. ON SEXUAL & REPROD. HEALTH 226 (2002) (finding higher abortion rates amongst the economically disadvantaged, and a disproportionate number of women below the poverty line having abortions), available at <http://www.agi-usa.org/pubs/journals/3422602.html>.

³¹ JEAN REITH SCHROEDEL, IS THE FETUS A PERSON? A COMPARISON OF POLICIES ACROSS THE FIFTY STATES 156–57 (2000) (studying provisions for adoption, prenatal laws, and aid to needy children in anti-abortion versus pro-choice states).

³² Andrew DeMillo, *D.C. Rethinks Required Pregnancy Tests*, WASH. POST, Sept. 5, 2001, at B1.

³³ Joan C. Williams, *The Family-Hostile Corporation*, 70 GEO. WASH. L. REV. 921, 921 (2002) (citing Steven Greenhouse, *Americans' International Lead in Hours Worked Grew in 90's, Report Shows*, N.Y. TIMES, Sept. 1, 2001, at A8).

³⁴ Jerry A. Jacobs & Janet C. Gornick, *Hours of Paid Work in Dual-Earner Couples: The United States in Cross-National Perspective*, 35 SOC. FOCUS 169, 171 (2002) (noting that by comparison, workers work overtime only 16.1% of the time in Germany, 2.3% of the time in Sweden, and 3.5% of the time in the Netherlands).

³⁵ TODAY'S WOMEN WORKERS, *supra* note 21.

These are the pressures that create what one co-author has called our economy of “mothers and others.”³⁶ Mothers find themselves in a bifurcated—and highly gendered—system of good jobs with very high hours, and part-time, low hours jobs offering depressed wages, few benefits, and little advancement.³⁷ Ninety-five percent of mothers work less than fifty hours per week year-round during the key years of both career building and child rearing.³⁸ As noted above, two out of three work less than forty hours per week year-round.³⁹ The United States lacks good thirty-five to thirty-nine hour per week jobs.⁴⁰ We tend instead to have fifty to sixty hour per week good jobs and twenty to twenty-five hour per week bad jobs.⁴¹ This pattern fuels what Phyllis Moen and Stephen Sweet have called the “neo-traditional family,” where the husband works long hours while the wife works much shorter hours and continues to do the bulk of the family work.⁴² In fact, in the average white, middle-class family, American fathers still earn, on average, nearly 70% of the family income.⁴³ This neo-traditional pattern is documented at length in Williams’s recent book, *Unbending Gender: Why Family and Work Conflict and What To Do About It*.⁴⁴

C. The Linkage of Health Insurance and Other Benefits to Good Jobs

For all of the above-mentioned reasons, a woman has a baby at her economic peril in this country. This becomes even clearer if you look beyond the workplace to the system we have for delivering vital benefits such as health insurance and pensions. Such benefits typically are linked to “good jobs”—well-paying, full-time jobs, which are not the kind of jobs most mothers have. Mothers who work part-time, or as

³⁶ See Joan Williams, *Our Economy of Mothers and Others: Women and Economics Revisited*, 5 J. GENDER, RACE & JUST. 411, 416–17 (2002) (citing Waldfogel, *Understanding the Family Gap*, *supra* note 19, at 143; JANE WALDFOGEL & SUSAN E. MAYER, *Gender Differences in the Low-Wage Labor Market*, in FINDING JOBS: WORK & WELFARE REFORM 214–15 (David E. Card & Rebecca M. Blank eds., 2000)).

³⁷ JERRY A. JACOBS & KATHLEEN GERSON, *THE TIME DIVIDE: WORK, FAMILY, AND GENDER INEQUALITY* 163–64, 167–68 (2004).

³⁸ Williams & Segal, *supra* note 24, at 88 (observing that with the career building years including those between the ages of twenty-five and forty-four).

³⁹ WILLIAMS, *supra* note 20, at 2.

⁴⁰ JANET C. GORNICK & MARCIA K. MEYERS, *FAMILIES THAT WORK: POLICIES FOR RECONCILING PARENTHOOD AND EMPLOYMENT* 153 (2003).

⁴¹ See *id.* at 151–56 (discussing the “all-or-nothing structure of employment in the United States”).

⁴² PHYLLIS MOEN & STEPHEN SWEET, *THE NEW WORKFORCE, THE NEW ECONOMY, AND THE LOCK-STEP LIFE COURSE: AN AMERICAN DILEMMA* 16 (Cornell Employment and Family Careers Inst., BLCC Working Paper #02–21, 2002).

⁴³ WILLIAMS, *supra* note 20, at 60.

⁴⁴ See generally *id.*

consultants out of their homes, often miss out on these important opportunities.

Thus, the family-hostile workplace is linked with family-hostile employee benefit arrangements that enhance mothers' economic vulnerability. The echo effect reverberates yet a third time because not only are private benefits linked with full-time, full-force "ideal worker" jobs, but so are unemployment insurance and other government-delivered, employment-related programs. Consequently, someone who is available only for part-time work often is not eligible for state unemployment.⁴⁵ This is one of the reasons why many mothers end up on welfare. Not even the family medical leave policies currently in place apply to part-timers.⁴⁶ Notably, countries where health care is not linked to employment have lower abortion rates. For example, in Canada the abortion rate in 2000 was 15.4%,⁴⁷ compared to 21.3%⁴⁸ in the United States.

The initial hostility toward family care in the workplace in the United States is thus echoed by the delivery of health care, pensions, and disability insurance through good jobs. The third echo is the design of government benefits, such as unemployment insurance, around the types of jobs held by most fathers, but by far fewer mothers. The result is the aforementioned economy of mothers and others, with large categories of mothers falling further and further behind: one recent study showed that the "family gap" has actually *increased* in recent decades.⁴⁹

D. *The Lack of Social Supports for Families in the United States*

The economy of mothers and others is coupled with a dramatic lack of social support for family life in the United States. We have the fewest supports for child rearing of any industrialized country in the world.⁵⁰ In Europe, mothers who work outside the home have access

⁴⁵ See Nancy Segal, *Full-Time Rights for Part-Time Workers: Parity in Wages, Benefits, and Advancement Opportunities*, 10 INDIVIDUAL EMPLOYEE RTS. J. (forthcoming 2004) (manuscript at 9–11, on file with authors) (discussing the economic penalties, both public and private, suffered by part-time workers).

⁴⁶ WILLIAMS, *supra* note 20, at 112.

⁴⁷ Statistics Canada, *Induced Abortions by Area of Residence of Patient*, <http://www.statcan.ca/english/Pgdb/health41a.htm> (last visited Apr. 23, 2004).

⁴⁸ Lawrence B. Finer & Stanley K. Henshaw, *Abortion Incidence and Services in the United States in 2000*, 35 PERSP. ON SEXUAL & REPROD. HEALTH 6, 9 (Jan./Feb. 2003), available at <http://www.guttmacher.org/pubs/journals/3500603.pdf>.

⁴⁹ See Williams, *supra* note 36 (2002) (citing Waldfogel, *Understanding the Family Gap*, *supra* note 19, at 143; Waldfogel & Mayer, *supra* note 36, at 214–15).

⁵⁰ See GORNICK & MEYERS, *supra* note 40, at 121–32.

to paid leave;⁵¹ in the Nordic countries this is supplemented by a system of high-quality child care centers,⁵² and, often, as in Sweden and Finland, a government-mandated right of a mother to work part-time until her child reaches school age.⁵³ This is not true in the United States. Here, we lack any nationally mandated paid parental leave.⁵⁴ Paid child care is expensive and of very uneven quality. Observational studies conclude only 9% of American child care centers provide excellent care.⁵⁵ Part-time workers and workers with family responsibilities lack the legal protections present in Europe and even in Canada.⁵⁶ Canada has one year of paid maternity leave,⁵⁷ and Quebec has state-subsidized, licensed day care that costs parents only five Canadian dollars per day.⁵⁸

We tend to think of the work-family conflict as “just a professional women’s issue,” but growing evidence suggests that this is not the case. In fact, the lower the education level of the mother, the *fewer* her hours of paid work.⁵⁹ If you keep in mind that one in four American workers earns less than \$8.70 an hour,⁶⁰ this makes sense: what kind of child care can you buy when you’re earning \$8.70 an hour? When an American woman becomes pregnant, this is the system that she faces for raising children—and access to abortion must be viewed in this context. The lack of social supports in the United States places mothers in a particularly vulnerable position. Their situation emerges in sharp relief if we compare the United States to Europe. France, for example, makes one-stop education, medical

⁵¹ Sheila B. Kamerman, *Parental Leave Policies: An Essential Ingredient in Early Childhood Education and Care Policies*, 14 SOC. POL’Y REP. 3, 5–6 tbl.1.0 (2000) (comparing maternity/paternity/parental leaves in twenty-nine countries), www.childpolicy.org/SocialPolicyReport-2000_v14n2.pdf; see also Clearinghouse on Int’l Dev. in Child, Youth, & Family Policies, *Comparative Policy Regimes and Programs* tbl.1 [hereinafter *Comparative Policy Regimes*] (same), <http://www.childpolicyintl.org/issuebrief/issuebrief5table1.pdf> (last visited Apr. 23, 2004).

⁵² Kamerman, *supra* note 51, at 10.

⁵³ *Id.* at 10–11.

⁵⁴ Cf. Family and Medical Leave Act, 29 U.S.C.A. §§ 2611–12 (West 2003) (providing twelve weeks of unpaid parental leave for employees who have been employed for at least twelve months and at least 1,250 hours by a single employer who has more than fifty employees).

⁵⁵ Nat’l Inst. of Child Health & Human Dev., *Characteristics and Quality of Child Care for Toddlers and Preschoolers*, 4 APPLIED DEVELOPMENTAL SCI. 116, 129 (2000).

⁵⁶ See Janet C. Gornick & Marcia K. Meyers, *Support for Working Families: What the United States Can Learn from Europe*, AM. PROSPECT, Jan. 1–15, 2001, Special Section: Children and Families, at 3 (discussing the differences between American and European statutory schemes for supporting childcare for working parents).

⁵⁷ *Comparative Policy Regimes*, *supra* note 51, at tbl.1.

⁵⁸ See Allison Hanes, *Quebec Hikes Fee for Day Care to \$7 a Day*, GAZETTE (Montreal), Nov. 14, 2003 (noting that this fee would rise to seven Canadian dollars per day on January 1, 2004), http://www.childcarecanada.org/ccin/2003/ccin11_14_03.html.

⁵⁹ GORNICK & MEYERS, *supra* note 40, at 47 tbl.2.3.

⁶⁰ BETH SHULMAN, *THE BETRAYAL OF WORK: HOW LOW-WAGE JOBS FAIL 30 MILLION AMERICANS AND THEIR FAMILIES* 5 (2003).

care, and psychiatric care available through a subsidized system of neighborhood child care centers. These programs are viewed as so important for children's social development that parents fight to get their children into them.⁶¹

How does the United States deliver these same services? They deliver them through a system of moms in cars. If you cannot be a mom in a car, your children may not have access to any of these services. This, again, is an important element of our system of child provisioning and is highly relevant to the conditions under which women choose to proceed with pregnancy or to end it, given that the goal of most mothers in the United States is a comfortable middle class life for their children—not one in which they and their children descend into poverty.

E. The Heightened Expectations for Mothers in Our Society

American mothers also face heightened expectations of motherhood. In *The Cultural Contradictions of Motherhood*, Sharon Hays documents what she calls the "ideology of intensive mothering."⁶² In the 1950s, mothers sent the children outside to play while they got on with the serious job of "making a nice home"—cooking, baking, et cetera.⁶³ Today's mothers, by contrast, are expected to devote an enormous amount of attention to their children to ensure their "proper" development. The most dramatic example of this phenomenon is the "floor time" recommendation by well-known pediatrician Dr. Stanley Greenspan. Dr. Greenspan recommends that each child be given a half hour of "floor time" each day with each parent and advises parents, in essence: "If [your child] wants you to get down on all fours and bark like a dog, do it. Participate in the action, but don't control it—she's the director, and you're the assistant director."⁶⁴ Dr. Greenspan admits that his mother never gave him floor time—in fact, he was such an "easy, independent baby" that she left

⁶¹ See WILLIAMS, *supra* note 20, at 49 (describing child care services in Europe); see also BARBARA R. BERGMANN, *SAVING OUR CHILDREN FROM POVERTY: WHAT THE UNITED STATES CAN LEARN FROM FRANCE* 28–35 (1996) (describing French nursery schools).

⁶² SHARON HAYS, *THE CULTURAL CONTRADICTIONS OF MOTHERHOOD* 6–9 (1996) (positing that "intensive mothering"—which emphasizes the mother's central role in care-giving, and requires "lavishing copious amounts of time, energy, and material resources on the child"—is the "dominant ideology of socially appropriate child rearing in the contemporary United States").

⁶³ See WILLIAMS, *supra* note 20, at 36 (comparing attitudes towards child rearing in the 1950s and 1960s to those today).

⁶⁴ *Id.* at 37 (quoting Natalie Wexler, *Beyond Quality Time*, WASH. POST MAG., Mar. 24, 1996, at 18, 20 (citing STANLEY I. GREENSPAN & JACQUELINE SALMON, *THE CHALLENGING CHILD: UNDERSTANDING, RAISING, AND ENJOYING THE FIVE "DIFFICULT" TYPES OF CHILDREN* 66–70 (1995))).

him alone to play in his crib while she did housework.⁶⁵ In other words, Dr. Greenspan gives a medical gloss to the new ideology of intensive mothering, which defines the good mother as someone who spends countless hours barking like a dog or, more often, driving her children from one lesson to another.

One suspects that all of this frantic “enrichment” is linked with economic anxiety: the middle class’s increased “fear of falling” in uncertain economic times.⁶⁶ Regardless, this new ideology of intensive mothering is the most recent manifestation of a cultural paradigm in which much is asked of mothers and little support is given. In the United States, we ratchet up the price of motherhood and privatize its costs onto individual women. It is in this cultural context of high expectations and little social support that American women make tough choices about whether or not to continue a pregnancy.

II. CONNECTING ABORTION TO THE CONDITIONS OF MOTHERHOOD

With these limiting conditions of motherhood in mind, let us turn to the statistics and personal stories that paint a picture of how women respond to these conditions. Logically, when they are able, women are waiting until later to have children, and are spacing them further apart. Despite this fact, there is no “baby-shortage.” In fact, women in the United States are having more children than at any time in almost thirty years.⁶⁷ However, the incidence of teenage births is down⁶⁸ and the mean age of American mothers is rising.⁶⁹ Though more than half of all births in the United States are still to women between the ages of twenty and thirty-four,⁷⁰ the average age for non-Hispanic white mothers has risen to 28; for non-Hispanic black mothers, the average age is now 25.2.⁷¹ The largest increase in mean age was for women having their second child.⁷² Abortion is part of this picture.

⁶⁵ *Id.* (quoting Wexler, *supra* note 64 at 24).

⁶⁶ See BARBARA EHRENREICH, FEAR OF FALLING: THE INNER LIFE OF THE MIDDLE CLASS 82–91, 83 (1989); (“It is one thing to have children, and another thing . . . to have children who will be disciplined enough to devote the first twenty or thirty years of their lives to scaling the educational obstacles to a middle class career.”).

⁶⁷ Joyce A. Martin, et al., Dep’t of Health & Human Servs., *Births: Preliminary Data for 2001*, 50 Nat’l Vital Stat. Rep. 4 (2002), <http://www.cdc.gov/nchs/births.htm>.

⁶⁸ *Id.* at 2.

⁶⁹ T.J. Mathews & Brady E. Hamilton, Dep’t of Health & Human Servs., *Mean Age of Mother, 1970–2000*, 51 Nat’l Vital Stat. Rep. 2 (2002), http://www.cdc.gov/nchs/data/nvsr/nvsr51/nvsr51_01.pdf.

⁷⁰ *Id.* at 1.

⁷¹ *Id.* at 7.

⁷² *Id.* at 2.

Women have abortions for many reasons. In a 1987 survey of abortion patients in the United States, over 90% of respondents said that more than one factor had contributed to their decision to seek an abortion; the mean number of reasons was nearly four.⁷³ More recent anecdotal evidence confirms these findings and adds additional nuances to the reasons patients give. The reasons why women seek abortions appear to fit into five major categories (often two or three figure into a woman's decision simultaneously):

1. A baby would interfere with the woman's job or school;
2. A baby would interfere with the woman's other caretaking responsibilities, including taking care of her existing children;
3. She cannot afford a baby, or another baby;
4. She does not want to be a single mother or is having relationship problems;
5. She is not ready to have a baby yet.⁷⁴

All of these reasons that women give for getting abortions are "good" reasons—meaning each woman has realistically examined her life and situation and is trying to do the best thing for her potential child. If a woman determines, based on her own analysis, that she is not financially or emotionally ready to have a baby (or to have another baby), then it is in both her and her potential child's best interest to allow her access to abortion. Forcing a woman to bear a child she cannot afford or is in no position to care for amounts to punishing both the woman and the child for accidental pregnancy or contraceptive failure.

Overall, our research finds that women who get abortions are acting in the best interests of their existing or potential children. Very few are trying to avoid childbearing altogether; they get abortions to avoid having *further* children or to delay childbearing until they are in a better situation to care for children. A 1987 study by AGI found that women have abortions because they are concerned with the effects of having a child at that particular time; most women who obtain abortions do not indicate that they never want to have children.⁷⁵

⁷³ Aida Torres & Jacqueline Darroch Forrest, *Why Do Women Have Abortions?*, 20 FAM. PLAN. PERSP. 169, 171 (1988).

⁷⁴ These reasons represent our own evaluation, reached by combining the Haven Coalition stories that follow and recent studies on the various characteristics of women who obtain abortions. See ALAN GUTTMACHER INST., TRENDS IN ABORTION IN THE UNITED STATES [hereinafter TRENDS IN ABORTION] (indicating that in 2000 a majority of American women seeking abortions were poor or low-income, the majority were also unmarried, and the majority were already mothers; often these women have more than one of these characteristics), <http://www.agi-usa.org/pubs/trends.ppt> (Jan. 2003); Jones et al., *supra* note 30 (same); see also Torres & Forrest, *supra* note 73, at 171.

⁷⁵ Torres & Forrest, *supra* note 73, at 175–76.

The AGI reports that one in three American women will have an abortion by age forty-five.⁷⁶ Since roughly 80% of women eventually have children,⁷⁷ clearly not all women are having abortions to avoid ever having children. Instead, many must be seeking abortions because they either don't want children *yet* or don't want any *more* children. Research and personal stories about abortion show that women seek to delay childbearing until they are in a steady relationship or marriage and have attained a financial position that will allow them to care for a baby. In this sense, the women seeking abortions are being anything but "selfish."

All of the personal stories below come from the Haven Coalition, which co-author Shauna Shames formerly directed. Haven is a grassroots, Underground Railroad-style network of women who provide patients with a place to stay when they come to New York City for an abortion. There are thirty Haven "hosts," who pick women up at bus or train stations, help them get to the clinics in New York City, pick them up at the clinics, take them to the host's apartment, make sure the patient gets a good dinner, and take them back to the clinic in the morning. Haven was founded in 2001, although women in New York City have been "hosting" patients informally since before *Roe v. Wade*.⁷⁸ In the past two years, Haven has helped over one hundred women access abortion services in New York City that are illegal or unavailable in their home states. Each Haven host collects the story of the woman she helps. The stories from Haven hosts reveal details of the personal situations of abortion patients (names have all been changed to protect privacy). Importantly, the Haven stories show how the pressure to be a "good mother" to potential or existing children figures prominently into low-income women's decisions to get an abortion.⁷⁹ Few of the patients whom Haven helps would call themselves feminists; the reasons they give for needing abortions usually center on doing the best thing for their existing or potential children.

⁷⁶ Alan Guttmacher Inst., *State Facts About Abortion: Wyoming* (Feb. 2003), <http://www.guttmacher.org/pubs/sfaa/wyoming.html>.

⁷⁷ See Barbara Downs, U.S. Census Bureau, *Fertility of American Women: June 2002, 2003 CURRENT POPULATION REP. 2 tbl.1* (indicating that 17.9% of women 40 to 44 years old, that is, at the end of their childbearing years, are childless), <http://www.census.gov/population/www/socdemo/fertility.html>.

⁷⁸ 410 U.S. 113 (1973).

⁷⁹ Haven hosts exclusively low-income women, as these women cannot afford to stay in a hotel if they have to come to New York City for an abortion.

A. *Interference with Job or School*

The fear that a baby would interfere with work, school, or other responsibilities was the most common reason that abortion patients reported in the 1987 AGI study (cited by three-quarters of all respondents).⁸⁰ Of those who said they were unprepared or not ready for the ways in which a baby would change their life, two-thirds (67%) said a baby would interfere with her job, employment, or career. One-half (49%) said a baby would interfere with her school attendance, and nearly one-third said children or other people already depend on her for care.⁸¹ In discussing these findings, the AGI analysts wrote:

The findings of this research indicate the difficulties many women face in delaying childbearing until they feel able to care for a baby and are in a relationship that they believe will last. Having a baby and raising a family can be an expensive proposition. Many young, unmarried or poor women are not covered for the costs of even prenatal care and delivery. Maintaining an adequate standard of living increasingly requires that women work, and to do so they must have an adequate education. Both aims can be threatened by an accidental pregnancy⁸²

Alicia's Story:

*Alicia was fifteen years old, with two kids—a two-year old and a six-month old. She had dropped out of seventh grade to raise her first child, then returned to school. She managed to finish seventh grade, then had another baby, and then finished eighth grade. It took her three years to finish seventh grade and get through eighth grade because she had taken time out for the children. Her boyfriend, the father of the six-month old baby, was eighteen, and wanted a third child to solidify his connection to and control over Alicia. When she found out that she was pregnant and wanted an abortion, her boyfriend threatened her with violence if she did not continue the pregnancy. She consulted her grandmother, with whom she lived and who was supportive of the abortion, and decided she could not handle a third child at age fifteen and still go to school. Her grandmother helped her get the abortion.*⁸³

Moreover, the data indicates that abortion rates decrease as education level increases. The abortion rate among college graduates (13 per 1,000) was lower than the average for all groups of women, and “women with college degrees were the only educational group to show a higher-than-average decline in abortion rates (30%) between 1994 and 2000.”⁸⁴

⁸⁰ Torres & Forrest, *supra* note 73, at 171–72.

⁸¹ *Id.*

⁸² *Id.* at 175 (footnotes omitted).

⁸³ Interview by Catherine M. with “Alicia,” New York, N.Y. (Spring 2001).

⁸⁴ Jones et al., *supra* note 30, at 232.

B. Avoiding Single Parenthood

As the discussion of the conditions of motherhood in the Introduction revealed, even women with supportive partners pay a heavy social and economic price to become mothers. For single mothers, the burdens are much greater. Knowing this, many women who find themselves unintentionally pregnant seek abortions to avoid single parenthood or to avoid pressure to marry their current partner, whom they may not view as the best potential father for a child. A 2003 AGI report on trends in abortion in the United States found that more than 80% of women having abortions are unmarried.⁸⁵ In an article, the authors noted that “[t]wo-thirds of women having abortions in 2000 had never been married, one in six were currently married and another one in six were separated, divorced or widowed when they became pregnant.”⁸⁶ Additionally, half of all respondents in the 1987 national AGI study reported that not wanting to be a single parent or having relationship problems was a major element in their decision to get an abortion.⁸⁷

Of the women who cited problems with relationships or with single parenthood as one of the most important factors, half said they did not want to marry their partner. Another third of respondents (32%) said they and their partners may be breaking up soon, and 29% said their partner either does not want to or cannot marry.⁸⁸ Additionally, violence in relationships tends to begin or intensify during pregnancy—women sometimes seek abortions for a planned pregnancy because their partner suddenly becomes abusive. Because most states do not link spousal abuse to paternal rights unless there is child abuse as well, having a baby is, literally, tying oneself to an abusive partner for life. One-quarter of women seeking abortions indicated that they were not in a relationship at all.⁸⁹ Many women also stated that they felt it was important for any child of theirs to have a decent, present father—something they often lacked themselves. This is fully in line with the general consensus about two-parent families, yet these women are not praised for their stance.

Marisa's Story:

Marisa, from Delaware, already had a two-year-old child and was pregnant with a second when her husband was killed in a car accident. With no way to support herself and her existing child and no savings, insurance, or support networks, Marisa decided she could not bring a child into poverty. She sought an abortion,

⁸⁵ TRENDS IN ABORTION, *supra* note 74, at 10.

⁸⁶ Jones et al., *supra* note 30, at 230.

⁸⁷ Torres & Forrest, *supra* note 73, at 170 tbl.1.

⁸⁸ *Id.* at 172 tbl.2.

⁸⁹ *Id.*

*but was too far along in the pregnancy to receive one in Delaware, and had to come to Haven in New York City to obtain one.*⁹⁰

Not surprisingly, given the economics of marriage and the stigma of single motherhood, unmarried women seek abortions at a greater rate than married women. Jones, Darroch, and Henshaw report that “[m]arried women had a rate of eight abortions per 1,000 in 2000, while rates for previously-married and never-married women were much higher—29 and 35 per 1,000, respectively.”⁹¹ Even women in the midst of a wanted pregnancy may seek an abortion if their situation changes drastically, as in Marisa’s story above.

C. Existing Children/Caretaking Responsibilities

Marisa’s story also touches on the third major reason women seek an abortion—they already have children or other caretaking responsibilities at home. The large majority of women seeking abortions intend to have children in the future, or already have children at home. AGI confirms this: “Since 1990, a majority of women having abortions have been mothers.”⁹² A separate 2002 study found: “The majority of women obtaining abortions had had one or more previous births—61%, up from 55% in 1994. Even among adolescent women having abortions, a fairly high proportion (23%) had had previous births, ranging from 32% among Hispanics to 28% among blacks and 16% among whites”⁹³ The earlier national AGI survey similarly found that among respondents thirty years of age and older, half cited having completed childbearing as a major reason in their decision to get an abortion.⁹⁴ While the AGI survey did not ask about other caretaking responsibilities, women of reproductive age are currently facing increased pressure to care for aging Baby Boomer parents. The social devaluation of caregiving labor coupled with the economic marginalization of mothers makes abortion a necessary option for women who are already overwhelmed with caregiving responsibilities. As Jones, Darroch, and Henshaw write:

[T]he fact that most women having abortions have already been pregnant and given birth reflects the importance and relevance of abortion in women’s reproductive lives. It is therefore important that high-quality, safe health care services be available and accessible, not only to women

⁹⁰ Interview by Alix S. with “Marisa,” New York, N.Y. (Mar. 20, 2003).

⁹¹ Jones et al., *supra* note 30, at 230. They also quickly note, “The abortion rates of women in the different marital-status groups are influenced by age, which differs sharply by subgroup.” *Id.*

⁹² TRENDS IN ABORTION, *supra* note 74, at 11.

⁹³ Jones et al., *supra* note 30, at 230.

⁹⁴ Torres & Forrest, *supra* note 73, at 170 tbl. 1.

who choose to carry pregnancies to term, but also to those who turn, instead, to abortion.⁹⁵

D. Not Ready for Childbearing

If motherhood is a difficult, expensive proposition for women who have finished school and already have jobs, it is even more daunting for teenagers and young women trying to complete their education. The literature shows that age is a major factor in abortion trends: "Almost one in every five women (19%) who had an abortion in 2000–2001 were adolescents, more than half (56%) were in their 20s and a quarter (25%) were 30 or older," according to Jones, Darroch, and Henshaw.⁹⁶ Twelve percent of all women having abortions are aged eighteen to nineteen,⁹⁷ and young teenagers were 32% more likely than women over eighteen to say they were not mature enough to raise a child.⁹⁸ This pattern of teenagers not being ready to assume the role of motherhood has remained steady over the past decade. In 1990, Fried wrote: "Women under 30, especially those 18–19, have the most abortions."⁹⁹

In the year 2000, Jones, Darroch, and Henshaw reported:

Women aged 20–24 have a higher abortion rate than any other age-group (47 abortions per 1,000), and women aged 40 or older have an exceptionally low rate (four per 1,000). Adolescents also have a higher-than-average abortion rate—25 per 1,000 women aged 15–19. The relatively high adolescent abortion rate is largely attributable to a high level of abortion among women aged 18–19 (39 per 1,000); the rate among 15–17 year-olds is 15 per 1,000.¹⁰⁰

LeeAnn's Story:

*LeeAnn, a very good student from a lower-middle-class African-American family in upstate New York, found out she was pregnant at age sixteen. She wanted to have children eventually, but not yet, as she wanted to finish high school, then go on to college and law school. She waited a long time to tell her mother, hoping something would go wrong with the pregnancy. When she finally did tell, her mother supported her decision to get an abortion and drove her down to New York for the procedure. LeeAnn continually apologized to her Haven host for being there, and talked about how she wanted to be a lawyer and just couldn't have a baby before finishing high school, because then she might never get to law school.*¹⁰¹

⁹⁵ Jones et al., *supra* note 30, at 234.

⁹⁶ *Id.* at 229.

⁹⁷ *Id.*

⁹⁸ Torres & Forest, *supra* note 73, at 173.

⁹⁹ *Who Has Abortions in the United States?*, in FROM ABORTION TO REPRODUCTIVE FREEDOM: TRANSFORMING A MOVEMENT 129, 129 (Marlene Gerber Fried ed., 1990) (citing the Alan Guttmacher Institute's two national surveys conducted in 1987 and 1988).

¹⁰⁰ Jones et al., *supra* note 30, at 230.

¹⁰¹ Interview by Georgia G. with "LeeAnn," New York, N.Y. (May 1, 2002).

E. Cannot Afford a Baby

Of the reasons women gave for seeking an abortion, not being able to afford a baby was a major factor, cited by 68% of respondents.¹⁰² Of those who said they could not afford a baby now, 41% were students or planning to study, 22% were unmarried, 19% were unemployed, and 14% had a low-paying job.¹⁰³ In all, poor and low-income women account for more than half of abortions in the United States.¹⁰⁴ Jones, Darroch, and Henshaw found:

Women with incomes below 200% of poverty made up 30% of all women of reproductive age, but accounted for 57% of all women having abortions in 2000: Twenty-seven percent of abortions were obtained by women living below the poverty line, and another 31% by women with incomes of 100–199% of poverty. The concentration of economically disadvantaged women among those having abortions was greater in 2000 than in 1994, when 50% of women obtaining abortions had incomes of less than 200% of poverty.¹⁰⁵

Overall, there is a clear inverse relationship between income and abortion rate: the 2000–2001 AGI study shows that “[a]bortion rates decreased as income rose, from 44 per 1,000 among poor women to 10 per 1,000 among the highest-income women. In 1994 as well, women with incomes below 200% of the poverty level had higher abortion rates than higher-income women.”¹⁰⁶ The literature notes that the high abortion rates among economically disadvantaged women are due, in part, to high pregnancy rates (133 per 1,000 for poor women and 115 per 1,000 for low-income women, as opposed to 66 per 1,000 for the highest-income women).¹⁰⁷ Such statistics probably reflect poor and low-income women’s knowledge, use of, and access to birth control rather than a higher affinity for abortion. Indeed, the highest-income women are the least likely to abort their pregnancies. This tends to indicate that the pregnancies of women in the higher income brackets are more often planned than those of poor women. Only 15% of high-income women’s pregnancies end in abortion, while 33% of pregnancies of poor and low-income women are aborted.¹⁰⁸

When we examine abortion trends over time, we find that income sharply impacts which women get abortions. In 1990, Fried wrote, “Poor women are 3 times more likely to have abortions than those

¹⁰² Torres & Forrest, *supra* note 73, at 170 tbl.1.

¹⁰³ *Id.* at 172 tbl.2.

¹⁰⁴ TRENDS IN ABORTION, *supra* note 74, at 9.

¹⁰⁵ Jones et al., *supra* note 30, at 231.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

who are not poor.”¹⁰⁹ While AGI finds that abortion rates overall have declined from 1994 to 2000, economically disadvantaged women had high abortion rates in both 1994 and 2000, and were the only group whose abortion rate increased substantially during that period.¹¹⁰ As Jones, Darroch, and Henshaw reported: “[O]ur findings demonstrate that abortion rates increased for economically disadvantaged women and women on Medicaid, while they decreased for middle- and higher-income women.”¹¹¹ In discussing possible reasons for this trend, they suggest that “[e]conomically disadvantaged women in 2000 may have found it harder to obtain and use effective contraceptive methods, as well as to care for and support a child when they did become pregnant.”¹¹² They also point out that specific changes in welfare policy (such as rules requiring welfare recipients to work), economic growth, expanding job markets, and the availability of new college tax credits “may have made it less feasible or less attractive for low-income women to have children,”¹¹³ or, we may add, to have any more children.

Sarah’s Story:

*Sarah, in her late thirties, had seven children with her husband. The oldest was eighteen, the youngest was ten. Her husband had recently announced that he was leaving her when she discovered that she was pregnant. They had not had a pregnancy in the last ten years; this was a birth control failure, a fluke. Sarah had been working since the youngest started preschool, and would lose her job if she had a new baby. She did not want her husband to know about the abortion because he was strongly opposed to it and she could not risk losing child support payments for her seven children. Her husband made more money than she did because she had taken so much time out of her career to raise the children.*¹¹⁴

Because of the close connections between race or ethnicity and income, we also find clear connections to race in the data relating to abortion rates and women’s economic situations. Black and Hispanic women have much higher abortion rates than white women: “The lowest abortion rate of all the racial and ethnic groups examined was among white women (13 per 1,000), while the highest rate was among black women (49 per 1,000). Hispanic and Asian women had abortion rates slightly higher than average (33 and 31 per 1,000, respectively).”¹¹⁵ However, Jones, Darroch, and Henshaw warn against taking this data out of context:

¹⁰⁹ See *Who has Abortions in the United States?*, *supra* note 99, at 129. This, undoubtedly, is related to poor women’s access to and education about birth control.

¹¹⁰ Jones et al., *supra* note 30, at 229, 231.

¹¹¹ *Id.* at 233.

¹¹² *Id.*

¹¹³ *Id.* at 233–34.

¹¹⁴ Interview by Catherine M. with “Sarah,” New York, N.Y. (Spring 2002).

¹¹⁵ Jones et al., *supra* note 30, at 231.

Black and Hispanic women are more likely than white women to be economically disadvantaged, and this partially explains their higher abortion rates. Within all three racial and ethnic groups, there is a clear association between poverty status and abortion, the abortion rate being higher among poor and low-income women [of that group] than among those with incomes greater than 200% of poverty.¹¹⁶

In other words, abortion is more about economics than it is about race or ethnicity.

Davia's Story:

*Davia, an immigrant from Guatemala, was living in Rhode Island and had two sons, a twelve-year-old and an eight-year-old. She was already supporting herself, two children, and her elderly mother on her meager menial labor salary. When she accidentally became pregnant, her boyfriend of three years abandoned her. She knew she could not work with a new baby, but could not tell her Catholic mother that she was pregnant. She began secretly saving money for an abortion, but, by the time she had saved enough, her pregnancy had progressed beyond the legal limit for an abortion in Rhode Island, so she needed to come to New York City for the procedure. She left her children with her ailing mother, and called them several times a day while she was in New York, crying that she was not with them.*¹¹⁷

Poverty or low-income status also affects women's ability to receive good prenatal care and to detect fetal problems early in the pregnancy. While doctors recommend that pregnant women receive sonograms every two months, they are not always covered by Medicaid or by the woman's insurance company. We have discussed in depth the economic conditions of motherhood itself, but pregnancy is also an expensive undertaking, requiring good medical attention throughout. For poor or low-income women without access to necessary health care benefits, a wide variety of problems can arise during pregnancy that make abortion a necessity.

Crystal's Story:

*Crystal and her husband were very happy to be having a baby, until they discovered that the fetus had severe brain anomalies and would not live past its second week. Medicaid in their home state of Pennsylvania does not cover the full measure of recommended prenatal procedures, such as sonograms every eight weeks. By the time the doctor informed them of the fetus' fatal defects, Crystal's pregnancy was too far along to get an abortion in Philadelphia. She had to come to Haven and stay in New York City for several days to obtain the procedure.*¹¹⁸

¹¹⁶ *Id.* at 234.

¹¹⁷ Interview by Shauna S. & Renee N. with "Davia," New York, N.Y. (May 15, 2003).

¹¹⁸ Interview by Georgina G. with "Crystal," New York, N.Y. (May 16, 2003).

DISCUSSION & CONCLUSION

In many ways, the current conditions of motherhood listed in the Introduction parallel the reasons given in Part II for why women get abortions. The family-hostile workplace weighs more heavily on poor or low-income women who cannot afford to reduce their work hours to care for their children. The tying of health care and other benefits to good jobs means that women who are unable to be "ideal workers" and get good jobs often cannot get health insurance for their children. The high price of motherhood affects all women facing an unintentional pregnancy. Further, the ideology of intensive motherhood can be very daunting for young or teenage women who need to both work and finish school.

In an international report examining who gets abortions and why, AGI reports:

Throughout the world, the reasons women give for deciding to end an unplanned pregnancy are similar. Basically, women decide to have an abortion because they are too young or too poor to raise a child, they are estranged from or on uneasy terms with their sexual partner, they are unemployed, they do not want a child while they are trying to finish school, they want to be able to work or they must work to help support their family¹¹⁹

The striking similarities between these reasons and those given by American women seeking abortions imply that abortion is neither an easy nor an unconsidered act. Women who seek abortions have thought carefully about their situation and have made the very difficult decision that they cannot take care of a baby, or another baby, at that time. Rather than reflecting anything about the individual women who get abortions, these reasons "demonstrate many of the difficulties that beset women in all walks of life who are trying to juggle competing roles and competing responsibilities and trying to adapt to changing societal expectations," according to AGI.¹²⁰

Poor and low-income mothers in the United States currently exist in a precarious position. The option of abortion acts somewhat like a pressure valve, allowing women to ensure that pressure does not overload the delicate balance they must strike between work, their own education, and their caretaking responsibilities for existing children or other family members. Removing abortion as an option would instantly thrust countless women and children into poverty. Reproductive freedom, in addition to its inherent justice and individualistic value, is a necessity due to the current conditions of motherhood in the United States. Those who seek to reduce abortion rates, citing

¹¹⁹ SHARING RESPONSIBILITY, *supra* note 4, at 18.

¹²⁰ *Id.*

the justification of "family values," should first turn their attention to improving the conditions for mothers in our country. The United States has a high abortion rate compared to other developed countries, which have better structures for women who choose motherhood. This is not a coincidence.

In all of the patients' personal stories, and in countless more that the Haven hosts and abortion clinic social workers hear, the desire to be a good mother reigns as a central theme. Even for those women seeking abortions who are not yet mothers, their reasoning is often the desire to wait to have children until they are ready, both economically and in terms of maturity or life situation. There is a common perception that there are two types of women: those who have children and those who get abortions. The data and the stories from Haven show us, however, that they are the same women. Abortion needs to be an option for all women who want to be good mothers for their existing or potential children.

Nearly fifteen years ago, Kathryn Kolbert, a feminist lawyer and leader in the reproductive rights movement, wrote:

Reproductive freedom means the ability to choose whether, when, how, and with whom one will have children. Choice means not only having a legal option, but also the economic means and social conditions that make it possible to effectuate one's choice. Reproductive freedom is necessary if all persons are to lead lives of self-determination, opportunity, and human dignity.¹²¹

Kolbert suggested that reproductive rights activists focus on a holistic view of women's lives in order to truly get the full picture of abortion, saying:

Unless parents are able to ensure that adequate food, clothing, and shelter and quality child care and education are available for their children, their reproductive choices are limited. A fair and equitable welfare system and jobs that pay a living wage are critical to this effort.

. . . .

In a society based on gender equality, one that accepts the personhood of women by valuing their ability to be parents, to undertake meaningful work outside the home, and to have proud aspirations for their lives—one that encourages men similarly to combine work and nurturing roles—the bearing and rearing of children would not so often amount to a confining loss of opportunities for women. Such a society would foster the conditions that make true reproductive choice possible. Such a

¹²¹ Kathryn Kolbert, *Developing a Reproductive Rights Agenda for the 1990s*, in FROM ABORTION TO REPRODUCTIVE FREEDOM: TRANSFORMING A MOVEMENT 297, 298 (Marlene Gerber Fried ed., 1990).

society would maximize reproductive choices and life options for all women and their families.¹²²

On the one hand, Kolbert calls for both the freedom and legal rights to make voluntary decisions, and comprehensive, quality, and affordable health care and human services on the other.

Not all women get abortions to preserve dreams of a good life for their existing or future children—but, for the many who do, the traditional force of the motherhood role provides a powerful justification for preserving reproductive rights. Researchers who have studied motherhood write of its enduring power in the public imagination. Crittenden writes, “In the United States, motherhood is as American as apple pie. No institution is more sacrosanct; no figure is praised more fulsomely.”¹²³ Luker agreed, noting that the sacred ground of motherhood is usually claimed by anti-choice activists. In enumerating the main reasons abortion opponents find the practice offensive, Luker wrote:

[They believe] abortion is wrong because it fosters and supports a world view that deemphasizes (and therefore *downgrades*) the traditional roles of men and women. Because these roles have been satisfying ones for pro-life people and because they believe this emotional and social division of labor is both “appropriate and natural,” the act of abortion is wrong because it plays havoc with this arrangement of the world.¹²⁴

In this Article, we have instead suggested that pro-choice activists use an examination of both the material and social conditions of motherhood in the United States today as an argument *for* reproductive rights. In a recent interview with Dottie Lamm, former candidate for the United States Senate, she mentioned that she had “played the ‘mother card,’” using stories of her children’s schooling in her campaign. “You use what works,” she said.¹²⁵ In this case, the candidate used her status as a mother to push for better education and child care policies. As Crittenden says, motherhood gives women a “unique moral authority, which in the past has been used to promote temperance, maternal and child health, kindergartens, a more lenient juvenile justice system, and most recently, to combat drunk driving and lax gun controls.”¹²⁶ It is high time that this same force is put to good use by those who fight for women’s rights to try to be the best mothers they can be.

¹²² *Id.* at 301.

¹²³ CRITTENDEN, *supra* note 28, at 1.

¹²⁴ LUKER, *supra* note 12, at 162.

¹²⁵ Shauna Shames, *The “Un-Candidates”: Gender and Outsider Signals in Women’s Political Advertising*, 25 WOMEN & POL. 115, 128 (2003) (quoting Dottie Lamm, Personal Interview (Oct. 20, 2000)).

¹²⁶ CRITTENDEN, *supra* note 28, at 1–2.

As noted in our Introduction, a focus on motherhood can be a double-edged sword. The stereotypical constructions of femininity underlying the strategy of "playing the mother card" can be used on other fronts to deny women equal access to certain jobs, sports, or leadership positions. Playing into traditional gender assumptions is often easier than challenging them directly, but can be risky if not based upon the actual facts of women's lives. From the AGI data, and from the stories of the Haven patients, we know that dreams of motherhood factor prominently into most, though not all, women's decisions to seek abortions. Abortion is a hot-button political issue precisely because it is multi-faceted, and precisely because it deals with women's role in society.

This Article is not intended to shift the entire tenor of the pro-choice rhetoric, but, rather, to provide another tool for the use of activists and advocates. In some cases it is not a hammer that is needed, but a wrench. In this piece, we are suggesting that the pro-choice (and pro-consent) side wrench back the high ground of motherhood and use it on behalf of mothers trying to make the best choices for themselves and for their existing or potential families.